UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SECURITY WALLS, LLC

And

Case 13-CA-07669

INTERNATIONAL UNION, SECURITY POLICE AND FIRE PROFESSIONALS OF AMERICA

MOTION FOR SUMMARY JUDGMENT

Comes now Respondent, Security Walls, LLC, by and through undersigned Counsel and pursuant to the provisions of Section 102.24 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, 29 C.F.R. 102 *et seq.* moves for Summary Judgment in the above captioned case against the National Labor Relations Board, Region 13, 209 South La Salle Street, Chicago, IL 60604-1443, as the Regional Director's Complaint raises no issues of material facts in dispute and Respondent is entitled to judgment as a matter of law. Respondent requests that the National Labor Relations Board issue a Notice to Show Cause why this motion should not be granted and that the hearing in this matter, (currently scheduled for October 22, 2012) be indefinitely postponed. The grounds therefor are set forth in the Memorandum filed concurrently herewith.

Respectfully submitted,

George Cherpelis
Counsel for Respondent
Law Office of
George Cherpelis, PLLC
9202 North 83rd Place
Scottsdale, AZ 85258-1812

Dated at Scottsdale,
AZ this 20th Day of September, 2012

Attachments

MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION

FOR SUMMARY JUDGMENT

This Memorandum is submitted by Undersigned Counsel for Respondent, Security Walls, LLC, (hereinafter "Employer" or "Respondent") in support of this Motion for Summary Judgment.

The pleadings filed herein and the case law cited to herein demonstrate that there is no genuine issue of material fact as to any allegations in the First/Second Amended Complaint, and Respondent is entitled to summary judgment as a matter of law. The National Labor Relations Board should enter an order dismissing this entire matter without further proceedings.

On September 10, 2012, Counsel executed and transmitted, via email, to the Regional Office, Respondent's acceptance of the Regional Director's proposed Settlement Agreement in NLRB Case No. 13-CA-076697 which alleged an independent violation of Section 8 (a)(1) of the Act. Thereafter on September 11, 2012, Counsel initialed and transmitted, via email, to the Regional Office, the proposed "Notice to Employees" in Case 13-CA-076697.

There being no material change in the allegations of a violation of Section 8 (a) (5) as set forth in either the original Consolidated Complaint or in the First Amended Complaint (hereinafter "Complaint"), Counsel hereby files this Motion for Summary Judgment addressing Respondent's 'failure and refusal' to provide the information request by the Union.

INTRODUCTION AND SUMMARY OF RESPONDENT'S POSITION

The Complaint alleges a violation of Section 8 (a)(5) of the Act, in that Respondent has "failed and refused" to provide the Union with a copy of "Respondent's current contract with the Department of Energy and Fermi National Accelerator Laboratories (hereinafter " DOE/Fermi").

Respondent, for the purposes of this Motion only, does not dispute the Board's allegation that it has "failed and refused" to provide the Union with a copy of its current contract with DOE/Fermi.[1]

I.. THE REFUSAL TO BARGAIN:

It is an uncontradicted fact that Respondent and the Union negotiated and entered into a Collective Bargaining Agreement (hereinafter "Agreement") effective March 1, 2011.[2] The Agreement contains two Articles setting out the specific procedures to be followed in connection

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1 The 8 (a)(5) allegations also alleges a derivative 8 (a)(1) allegation.

2 Copies of the relevant Articles of the Agreement are attached as Exhibits A through D.

with the reopening of the Agreement during its term. These provisions are set out in Article 27, "Complete Agreement" and Article 23, "Wages."

The Parties expressly provided limitations upon the reopening of contractual provisions by virtue of the language of Article 27.[3] This language is virtually identical to the language which was acknowledged and approved by the Board in *Jacobs Mfg. Co.,*[4] as being sufficient to foreclose future discussions of matters either **in**cluded or **ex**cluded from the collective bargaining agreement. There is one difference however in the instant Agreement, which provides the Parties with slightly more flexibility. Article 27 allows the reopening of the Agreement upon the **'mutual agreement'** of the Parties. Obviously, for the Parties to agree to reopen, there can be no **'mutual agreement'** without a 'request to reopen' and an 'affirmative response' by the other party.

Article 23 f[5] provides that "Wages" may be opened during the term of the Agreement upon following the procedures set forth therein. Inasmuch as the Parties have negotiated, approved and incorporated this language into the Agreement which was created and entered into in accordance with the requirements of Section 8 (d) of the Act, they are mutually bound to honor and abide by its terms as they have committed themselves to do in Article 1 "Purpose" Section 1.3.[6] Neither Party is free unilaterally to ignore, modify or violated the provisions of the Agreement.

Here, the Union failed to follow the provisions of Article 23 f which clearly requires that negotiations be ", , , initiated upon **written notice** to the other party **sixty (60) days prior to** the applicable anniversary date of the agreement . . . " (Emphasis added.) The applicable anniversary date is March 1, as set forth in Article 28: Term of Agreement.[7] There is neither evidence of any "written notice" having been provided by the Union to reopen the Agreement within the time constraints set forth in Article 23 f, nor does the Complaint contain any statement alleging that the Union complied with this requirement. The Complaint, through its several iterations merely alleges, without any foundation, in Paragraph VII (c) that Respondent has " . . . failed and refused to provide the information requested. . . . " The Agreement was never reopened in accordance with its terms, for the purpose of wage negotiations. Nor was the Agreement reopened in accordance with the terms of Article 27, i.e. ' upon mutual agreement.'

Without the Agreement having been reopened in compliance with the provisions of either

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3 Exhibit B, Article 27.

4 196 F. 2d 680 (2d Cir. 1952)

5 Exhibit C - Article 23.

6 Exhibit D - Article 1.

7 Exhibit A - Article 28

Article 23 "Wages," or Article 27 "Complete Agreement" the Complaint is bereft of legal or factual support, or any justification either by virtue of any provision of the Act in case law. In order for the information requested to be "necessary for, or relevant to, the Unions performance of ". . . its duties . . . " the information sought or requested, must be connected to a topic or subject raised by the requesting Party during the course of collective bargaining or for the purposes of processing or resolving a grievance. Neither circumstance is present here. Without having followed the required procedures for reopening the Agreement, the Union's 'request' for information has no 'necessity for' or 'relevance to' the performance of any purported duty of the Union. Apparently under the Board's interpretation of case law, 'necessity' and 'relevance' are flexible terms and can be defined and applied in any manner the Board and the Union feel may be appropriate for their purposes.

To issue Complaint on the basis of the Union's naked demand without the existence of any underlying grievance or negotiations, and without even identifying the subject matter upon which the request is based in order to infer some relevance, is without precedence. Neither the Union nor the Board can 'bootstrap themselves into creating a violation of the Act fashioned from wishful thinking, or by attempting to impose upon the Employer the burden of compensating for the Union's failure to have followed the provisions of the Agreement for reopening any provision thereof whereby the Union could have made some legitimate attempt to establish a relevant basis to support its request for information.

II. STATEMENT OF FACTS

A. The Employer's Status

Respondent contracts with various agencies to provide security services, both armed and unarmed, at federal facilities. The relevant contract in this matter is between Respondent and the Department of Energy and the Fermi National Accelerator Laboratory located in Batavia, Illinois. Respondent serves as the 'prime contractor' thereunder. AlliedBarton Security Services, LLC (hereinafter "AlliedBarton") is a sub-contractor to Respondent. Both entities provide unarmed Security Guards in fulfilling the contract with DOE/Fermi, although AlliedBarton is not privy to the contract with DOE/Fermi. At all times and to the extent relevant, Clayton Crews was employed by Respondent as Site Operations Manager. Robert Greene, Union Chief Steward was employed by AlliedBarton.

B. The Union's Status

The Union was certified by the Board in Case No. 13-RC-21717 at a time when it represented employees of Respondent's predecessor contractor at DOE/Fermi, Trinity Protection Services, Inc. d/b/a TPS Security. Greene served as Union Steward in its relationship with Trinity. The Trinity relationship with DOE/Fermi terminated as of September 30, 2010, at which time Respondent succeeded Trinity as the employer of the bargaining unit.

Thereafter, the Union and Respondent entered into collective bargaining negotiations. An Agreement was reached effective March 1, 2011 through February 29, 2014. Greene as Union Chief Steward participated in all negotiations and is signatory to the Agreement. It is indisputable that it is the purpose of the Act to encourage the process of collective bargaining between an employer and the exclusive representative of its employees. The Act also advances the proposition that having negotiated and agreed upon the terms of their relationship, the parties are obliged to negotiate (and attempt to resolve) questions arising thereunder. To this end collective bargaining agreements typically contain a grievance procedure to address "any question arising" under the scope of the agreement. It is beyond argument that both Parties are bound to observe and honor the terms of their Agreement.

C. The Relevant Provisions of the Collective Bargaining Agreement.

As mentioned above, the following provisions control the reopening of negotiations between the Parties during the term of the Agreement, March 1, 2011 through February 29, 2014:

1. Article 23 f Wages

"The Parties agree to reopen this Article for negotiations in the second and third years of the Agreement. Negotiations shall be initiated **upon written notice to the other party sixty (60) days prior to the applicable anniversary date of the agreement.** The Agreement shall continue in full force and effect throughout its term." (Emphasis Added.)

2. Article 27 Complete Agreement

"The parties acknowledge that each has had the unlimited right and opportunity to make demands and proposals with respect to any matter deemed a proper subject for collective bargaining and that all such subjects have been discussed and negotiated upon and the agreements contained in this Agreement were arrived at after the free exercise of such rights and opportunities. The results of the exercise of such rights and opportunities are set forth in this Agreement. Therefore, the Employer and the Union for the duration of this Agreement each voluntarily and unqualifiably agrees to waive the right to oblige the other party to bargain with respect to wages, hours or any other terms and conditions of employment even though the specific subject or matter may not have been within the knowledge or contemplation of either or both Parties at the time they negotiated or executed this Agreement, **unless mutually agreed otherwise."** (Emphasis added.)

D. The Union's Disingenuous Action

The Union and its Chief Steward were, or should have been aware, of their responsibility to follow the requirements of Article 23 f inasmuch as the language of the Union's agreement with the previous employer, also contained a reopening provision for a wage reopener which differed substantially from that found in the Agreement with Respondent.

Certainly, the Chief Union Steward and the Union's principal negotiator should be aware of the terms of collective bargaining agreements they have negotiated and for which they are responsible for enforcing. Certainly, the Union is required by the necessities of its duties in representing its membership, to be aware of the provisions of collective bargaining agreements it has negotiated and is required to honor and enforce.

The representatives of both parties to a collective bargaining agreement are obliged to honor and follow the provisions and procedures set forth in the agreements negotiated and executed by the respective parties thereto.

E. The Charges and the Complaint

1 Board Documents

(a). On March 15, 2012, The Union filed the Charge in case No. 13-CA-076699 alleging that "On or about February 28, 2012, the Employer failed and refused to provide relevant information to the Union per its February 21, 2012 request."

(b) On May 15, 2012, AlliedBarton Security Services, LLC was added as a joint employer. All allegations of violation remained unchanged.

(c) On July 19, 2012. The Order Severing AlliedBarton Security Services, LLC From Outstanding Complaint and all Further Proceedings was issued.

(d) On August 20 2012, the First Amended Consolidated Complaint and Notice of Hearing was issued.

(e) Respondent currently awaits documentation confirming settlement of the independent 8 (a)(1) Charge in Case No. 13-CA-076697

2. Alleged Failure and Refusal to Provide Information

The allegation that Respondent committed violations of the Act, by reason of its "failure and refusal" to provide the Union with a copy of Respondent's current contract with DOE/Fermi to provide security services at Fermi completely perverts the meaning and purposes of the Act. The Board in ignoring its own legal precedents as well as Supreme Court case law, has concluded that Respondent, in rejecting the Union's unfounded request for the contract, committed an Unfair Labor Practice within the meaning of Section 8 (a)(5). The Board, in so acting, has made a 'leap of faith' apparently without even attempting to consider the factual circumstances and the relevance of the language in the Collective Bargaining Agreement between the Parties and Respondent's response which was entirely consistent with existing case law and the provisions of the Agreement.

As mentioned above, the Agreement between the Parties contains both a 'zipper' or 'complete agreement' clause (Article 27) as well as specific language and procedures providing for the reopening of wage negotiations (Article 23 f), the latter requiring timely written notice to request reopening, and the former requiring the mutual agreement of the Parties, to reopen. The Board then goes on to allege that the information requested, ". . . is necessary for, and relevant to, the Union's performance of its duties . . . ". Interestingly, neither the Union's request for the contract, nor the Board's allegation of a violation of the Act, contain any suggestion of exactly to what topic or subject, under the Collective Bargaining Agreement, the Union's request purports to be 'necessary and relevant.[8] To accept the proposition advanced by the Complaint would open the door to allowing any and all information and documents that might be requested by either party to a collective bargaining agreement, **is necessary and relevant.** Under that theory might not the doors be opened to a request for **any information or documentation** to be admitted in litigation as well? Virtually anything and everything would be 'necessary and relevant', and presumably available to one's opposite number under any scenario.

In order for Paragraph VII of the Complaint to be viable and enforceable, it is necessary for the Union first to have opened the Agreement for negotiations in accordance with its terms, and then to identify a subject matter upon which the subject matter of its request would have some bearing. The Act requires collective bargaining as to wages, hours and other terms and conditions of employment. The law also requires that upon request any agreement reached by the parties be reduced to writing. This requirement has been met and the wages, hours and other terms and conditions of employment are set forth in their current Agreement. The Agreement defines the scope and breadth of the labor-management relationship that are to followed during its term. Inasmuch as both Parties negotiated and are signatory to the Agreement, there exists a mutual obligation to honor the terms and provisions thereof. The Union's commitments, duties and obligation as well as those of the Employer are set forth in that Agreement. Other extraneous issues are not relevant to that Agreement unless made so during the course of negotiations by virtue of the position taken asserted by a party during the course of negotiations. There being no negotiations taking place at the time of the Union's request, how then can the request for information be relevant to anything? (*Truitt supra)*

For example: An employer would not be entitled to information relating to the salaries paid by the Union to its own clerical staff unless that topic was raised by the Union during negotiations and asserted as a measure or standard of wage rates in the industry. Likewise, the sources of the Employer's income or relationship with its customers are not relevant unless made so by the Employer during the course of negotiations. In order for either of the foregoing hypotheses to have any relevance, there must be some representation or claim by either Party that reliance upon that issue justifies or supports a position that it has taken during the course of negotiations.

There was no grievance pending, nor had the Agreement been reopened, in order for a

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[8] See *Truitt Manufacturing Co.*, 351 U.S. 149 (1956)

claim of 'necessity or relevancy' to the information sought, to be justifiable. There is no evidence or claim either in the Charge or the Complaint, that the Parties had been in negotiations over any subject, let alone the relationship between Respondent and DOE/Fermi that could support the Union's claim or the Board's allegation. The information requested by the Union is neither necessary nor relevant to the Unions performance of its contractual duties. The Union is not the co-equal partner of the Employer in the conduct of the Employer's business dealings with third parties unless the Employer itself uses that business relationship as a basis for denying or granting a Union demand during the process of bargaining or grievance resolution. The wages of bargaining unit members are set by the terms and provisions negotiated by the Parties and set forth in their Agreement, as required by Section 8 (d) of the Act. Neither the provisions of Article 23 f or Article 27 which control the reopening of the Agreement for any purpose, were followed by the Union. There is no allegation or evidence that either of these Articles is unlawful. The Board has no authority to alter or amend any lawful contractual provision.

The Board's conclusory allegations set out in Paragraph VIII are totally without merit or support in either fact or law.

III. ARGUMENT

A. THE ALLEGED 8 (a) (5) VIOLATION

The thrust of the Board's 'refusal to bargain' allegation is based upon Respondent's failure and refusal to furnish a copy of its contract with DOE/Fermi to provide security services at the Fermi facility in Batavia, Illinois. The complaint alleges that the contract is" . . . necessary for, and relevant to . . . " the Union's performance of its duties in the representation of the bargaining unit.

1. "Necessary for:"

The first question that arises and which requires clarification is "necessary for what?" There is no logical or rational reason for the contract with DOE/Fermi to be involved in the Union's obligations under the Agreement. There is no evidence or allegation that DOE/Fermi took any action, adverse or otherwise, against any bargaining unit employee. There is no allegation that the contract with DOE/Fermi in any way imposed any restriction upon the Union's activities in representing the bargaining unit. There is no allegation that DOE/Fermi in anyway became involved in the relationship between the Union and Respondent. The obvious reason is that there were no on-going negotiations between Respondent and the Union, either under a wage reopener or any grievance. There is no allegation that Respondent ever told the Union that it was restricted in its actions by reason of the contract with DOE/Fermi.

Obviously, a principal duty of the Union as a direct party to the Agreement, is to police and administer the Agreement in order to be certain that the rights of its members are protected, and that its terms are honored by the Employer in their execution. Also obvious is the obligation

of the Union to police and administer the terms of the Agreement. This obligation flows directly from the Agreement and the scope of the obligation is established by the language of the Agreement.[9]

Another important 'duty of the Union' is to take appropriate action when it perceives that there has be a misinterpretation, misapplication or violation of the Agreement. Should the Union feel that there has been an aberration in the application of the Agreement, it is incumbent upon the Union to bring the matter to the attention of the Employer and if the issue cannot be resolved, to process the matter under the contractual grievance procedure.

2. "Relevant to:"

To be *relevant* a *topic* must *bear upon, be connected with, or pertinent to* another topic or matter. Relevancy does not stand alone. To be relevant a matter must have a logical and direct connection to another specific topic or matter. To claim that a document is 'necessary for or relevant to' the performance of the Unions duties says no more than claiming owning a hammer *is necessary or relevant to* a bookkeeper, without pointing out that the bookkeeper is building a dog house or repairing a broken board in the office. Otherwise, the hammer has no relevance to keeping books of account unless the requirement of *owning a hammer* is required because the bookkeeper is performing an act which requires the use of the hammer.

The Complaint as well as the Union's 'request' completely fail to connect the asserted necessity or relevance to any specific need for the contract. Section 8(d) does not impose any duty or obligation of the Parties to negotiate the relationship between the Employer and its customer, unless that relationship has been asserted by the Employer to be inextricably intertwined with its relationship to the Union. The Agreement itself makes no mention of the contractual relationship between Respondent and DOE/Fermi other than to identify the location of the work site.

Admittedly the Management rights provision of the Agreement in Article 3.4: Management Rights, acknowledges that the client, DOE/Fermi may direct the Employer to deny an employee access to the work site, however that Article also provides that such a circumstance would be subject to the Grievance and Arbitration provisions of the Agreement. The instant matter does not involve the Management Rights Article of the Agreement or a claim of denial of access, a subject specifically addressed in the Agreement, and one whereby relevance could be determined, unlike the instant matter where the Union has made a vague and unsupported request for information based, apparently on nothing more than a desire to satisfy its curiosity. When the Parties are engaged in grievance processing or in specific negotiation issues They are engaged in discourse related to a specific matter from which relevance can easily be determined. rod.

There is no provision in the Agreement referencing any other contract or agreement with

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[9] *Ohio Power Company,* 216 NLRB 987, p 992 (1975)

a third-party, such as the Union, which would serve to control the business judgment of the Employer. The only way the contract with DOE/Fermi could become necessary or relevant" would be for the Employer to make it so during either contact or grievance negotiations.

B. APPLICABLE LAW

(1) The Obligation to Bargain

In accordance with the requirements of Section 8 (d) of the Act, the terms of any agreement reached by the parties should be incorporated into a written contract. Once that written contract has been effectuated, the parties are obliged to honor its terms. Section 8 (d) addresses the subject of reopening an agreements during its term.

The Parties here have negotiated the terms of their relationship and have incorporated them into a written Agreement. That Agreement contains two specific provisions relating to the waiver by the Parties to reopening the Agreement, and the specific requirements to overcome such a waivers.

(2) The Complaint is Unsupported Both by Board and Judicial Decisions

In *Ohio Power Company (supra)*, the Board adopted the ALJ's decision, and held that the employer was bound to provide certain information requested by the Union. Any reliance upon this case, however would patently be misplaced. In *Ohio Power*, a grievance had been filed and resolution was being processed. There were several exchanges between the parties during which the Union requested certain information be provided by the employer. The information requested was specifically identified as well as well as the union's specific need for the information. The ALJ clearly observed that where the information sought, directly and clearly involved contractual employment conditions, as set out by the Union in its request, the relevancy of the information was established, and no further elucidation was necessary. The ALJ went on to delineate more fully the scope of relevance citing , *Curtis-Wright Corporation v.* NLRB, .[10].

> ". . . where the request is for information with respect to matters occurring outside the unit, the standard is somewhat narrower . . . and relevance is required to be somewhat more precise."

Here there was no reason given by the Union, nor was any alleged in the Complaint, and more importantly, there was no claim by Respondent of any nature that the contract with DOE/Fermi was in any way involved.

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[10] 347 F. 2d 61 (3rd Cir. 1965)

In *Southwest Bell Telephone,*[11] where the union requested cost information pertaining to subcontracting of unit work, the Board overruled the ALJ saying:

> "It has been long established by court and Board decisions that certain information is presumptively relevant because it bears directly on the negotiations or general administration of the collective-bargaining agreement. Other information, not so obviously related to the Unions bargaining or contract administration or grievance responsibilities may or may not be relevant, depending on the circumstances. In our opinion the relevance of the information requested has not been established herein." *(At p 172)*

Another case which supports Respondent's position is *National Broadcasting Company, Inc.*[12] the Board affirmed the ALJ's order requiring the employer to furnish certain information to the union. A careful reading of the ALJ's decision demonstrates a consistent rationale under the case law, citing to *Ohio Power (supra)* as well as *Doubarn Sheet Metal,* [13] and also to *Newspaper Guild Local 95 v. NLRB :* [14]

> "The obligation [to provide information] is not unlimited. Thus where the information is plainly irrelevant to any dispute, there is no duty to provide it. When the requested information deals with matters outside the bargaining unit, the union must establish the relevance and necessity of its request for information." *(p 1169)*

In the instant case, the information requested is for a contract between Respondent and a third- party, not privy to the Agreement between the Union and Respondent. The Union at no time ever articulated to Respondent the reason that it needed the requested information. Not only would the Employer have been better informed as to the nature of the request, but also would the Board.

In a recent decision, the Board affirmed the ALJ's analysis of 8 (a)(5) matters involving the obligation to furnish information at the request of the union and relevant to a union's performance of its duties as the representative of unit employees. In *Dover College Services, Inc.*[15] the ALJ relied upon the Supreme Court Decision in *NLRB v. Truitt Mfg. Co., (supra)*

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11 173 NLRB 172 (1968)

12 173 NLRB 172 (1968)

13 243 NLRB 821 (1979)

14 548 F. 2d 863 (9th Cir. 1977)

15 358 NLRB No. 84

pointing our that if an employer asserts an inability to pay, in support of its bargaining position, it requires proof of the accuracy thereof. The ALJ went on to point out the difference between an "unwillingness to pay" which does not require an obligation to provide financial information, and an "inability to pay" which does. To further emphasize the irrationality of the Complaint, here there were no negotiations, no grievance and no reference of any kind made to the DOE/Fermi contract by the Employer.

The Union is not entitled to a copy of the contract between the Employer and its customer or client merely because the Union is curious about their relationship, or because it wishes to intrude into the arena of the Employers business relationships. The Supreme Court made it clear in *First National Maintenance Corp. v. NLRB,* [16] that a union is not an employer's business partner merely because it represents the bargaining unit:

> "Nonetheless, in establishing what issues must be submitted to the process of bargaining, Congress had no expectation that the elected union representative would become an equal partner in the running of the business enterprise in which its members are employed. *(p 676)*

Accordingly under the contract limitations referred to above with respect to the reopening of negotiations midterm, those Board and ALJ decisions dealing with the subject of relevance and necessity as well as the Supreme Court's observation that serving as a bargaining agent does not provide a license for the union to intrude into the private business and financial relationships of the employer, unless the employer takes such action or states a position that makes the information or document relevant.

(3) The Union Does Not Sit on Both Sides of the Bargaining Table

The Complaint asserts the Union is entitled to a copy of the contract between Respondent and DOE/Fermi merely by virtue of having made a request for it. The Union is neither a party to that contract, nor otherwise privy to its contents. The contract represents a business relationship between a principal and its agent. As such, it addresses and defines the terms and conditions and respective obligations of those parties relative to the undertakings described in that agreement. The contract addresses the matters attendant to providing security services to DOE/Fermi. It was not negotiated subject to any provisions of the National Labor Relations Act. It is a document between Fermi and Respondent and is not within the purview of Section 8 (d).

To reiterate the Supreme Courts's admonition in *Truitt:* "Each case must turn on its particular facts." The facts of this matter reveal that in failing to reopen the Agreement for wage negotiations (or for any other reason) there was no bargaining dialogue of any kind or nature undertaken between the Parties. There would be no reason for the Employer to assert any

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[16] 452 U.S. 666 (1981)

reference to the contract with DOE/Fermi other than to preserve its confidentiality as a business document. To require Respndent to provide the contract unilalterally without regard to any position which might be taken by the other party, is irresponsible, and would corrupt the meaning and purpose of the Act and create industrial chaos.

IV. CONCLUSION

Based upon the foregoing undisputed facts, argument and case law, Respondent respectfully submits that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law on the issues raised in the Complaint. Pursuant to Section 102.24 (b) of the Board's Rules, Respondent request the Board issue an Order to Show Cause by Respondent's Motion should not be granted and that the hearing in this matter be postponed indefinitely.

Alternatively, Respondent respectfully submits there is no issue of material fact with respect to the alleged violations of Section 8 (a) (5) and 8 (a) (1) concerning Respondent's failure and refusal to furnish, to the Union, a copy of the contract with DOE/Fermi and that Respondent is entitled to judgment dismissing the Complaint in its entirety as a matter of law.

Dated: September 20 2012

LAW OFFICE OF
GEORGE CHERPELIS, PLLC

By _____
George Cherpelis
Attorney for Respondent
9202 North 83rd Place
Scottsdale, AZ
85258

ARTICLE 28: Term of Agreement

This agreement shall be effective March 1, 2011 and shall remain in full force and effect until its expiration date on February 28, 2014.

On or before sixty (60) days prior February 28, 2014 either party may notify the other party in writing of its desire to negotiate the terms and provisions of a successor agreement. Promptly after such notification, and during such sixty (60) day period, the parties shall meet and engage in collective bargaining negotiations.

If neither party gives notice to the other party of its desire to negotiate a successor agreement before the expiration date of this Agreement as above provided, this Agreement shall automatically be renewed for successive one year terms thereafter.

IN WITNESS THEREOF, the parties have caused their names to be subscribed by their duly authorized officers and representatives as of this 16th day of March 2011.

For the Union: _____ Date 3/16/11
Guy Thomas
Director at Large

For the Union: _____ Date 3/16/11
Robert L. Greene
Chief Union Steward

For the Employer, Security Walls, LLC: _____ Date 3/16/11
Juanita Walls
Chief Manager
Security Walls, LLC

For the Employer, AlliedBarton Security Services, LLC: _____ Date 3/16/11
David Chapla
Director Labor Relations
AlliedBarton Security Services, LLC

RESPONDENT'S Exhibit A

ARTICLE 27: Complete Agreement

The parties acknowledge that each has had the unlimited right and opportunity to make demands and proposals with respect to any matter deemed a proper subject for collective bargaining and that all such subjects have been discussed and negotiated upon and the agreements contained in this Agreement were arrived at after the free exercise of such rights and opportunities. The results of the exercise of such rights and opportunities are set forth in this Agreement. Therefore, the Employer and the Union for the duration of this Agreement each voluntarily agrees to waive the right to oblige the other party to bargain with respect to wages, hours or any other terms and conditions of employment as set forth herein, even though the specific subject or matter may not have been within the knowledge or contemplation of either or both Parties at the time they negotiated or executed this Agreement, unless mutually agreed otherwise.

ARTICLE 23: Wages

Effective February 8, 2011, applicable wage rates shall be as follows:

a.

Security Officer	Employment Period
Level 1	Zero (0) – six (6) months $ 14.25 per hour
Level 2	Seven (7) – twelve (12) months $ 14.50 per hour
Level 3	One year of service or more $ 14.75 per hour

b. To be eligible for advancement to Level 3 pay status, Employees shall meet and maintain current qualifications in all client and/or state mandated requirements, training and certifications.

c. Employees with one year or more of employment service who do not meet the Level 3 eligibility requirements set out above shall remain at the Level 2 pay status, until such time as they meet the foregoing qualifications.

d. Compensation for newly-hired Security Officers in Training:

Forty hours Classroom Training	$ 11.00 per hour
Forty hours On the Job Training	$ 11.00 per hour

e. All other training shall be compensated at the Employee's then-current wage rate.

f. The Parties agree to reopen this Article for negotiations in the second and third years of the Agreement. Negotiations shall be initiated upon written notice to the other party sixty (60) days prior to the applicable anniversary date of the agreement. The Agreement shall continue in full force and effect throughout its term.

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

SECURITY WALLS, LLC, ALLIEDBARTON SECURITY SERVICES, LLC

AND

INTERNATIONAL UNION, SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA

AT

FERMI NATIONAL ACCERLERATOR LABORATORY, BATAVIA, ILLINOIS

AGREEMENT

This agreement is entered into on this 1st day of March 2011 between Security Walls, LLC, AlliedBarton Security Services, LLC (hereinafter collectively referred to as "Employer") and the International Union, Security, Police and Fire Professionals of America (hereinafter, "SPFPA" or "Union").

ARTICLE 1: Purpose

1.1 The Union recognizes the obligation of the Employer to provide uninterrupted Unarmed Security Guard Related Services to Fermilab at this facility.

1.2 The Employer recognizes the obligation of the Union to represent bargaining unit members in their relationship with the Employer.

1.3 Accordingly, the purpose of this Agreement is to establish and maintain a harmonious collective bargaining relationship between the Parties hereto, to provide for the peaceful adjustment and resolution of any differences which may arise between the Parties and to set forth the agreement between them relating to rates of pay, wages, hours and other terms and conditions of employment.

CERTIFICATION OF SERVICE

Copies of the foregoing Motion for Summary Judgment and Memorandum in Support thereof, were served this day served upon the parties as follows:

VIA E-FILING

Lester A. Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C 20570

Via Electronic Mail Only
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